

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3512 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : YES  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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I H MEHTA

Versus

STATE OF GUJ  
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Appearance:

Mr. M.B. Parikh for Petitioner  
Mr. RV Desai for Respondent No. 1, 2  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/08/2000

ORAL JUDGEMENT

Learned advocate Mr.Parikh is appearing for the  
petitioner. Learned AGP Mr. RV Desai is appearing for  
the respondents. In this petition, rule was issued by  
this court on 17.7.1987 and the matter was ordered to be

heard expeditiously. Respondents have not filed any reply to the present petition.

The facts of the present petition, in brief, are that the petitioner was appointed as a clerk on 16.1.1951 in the revenue department in the at Amreli District. On 15.8.1960, he was promoted as a senior clerk (now deputy mamlatdar) and on 1.6.1980, he was promoted as a mamlatdar and was posted as rojgar project officer at Dhrol and, thereafter as RRT, Jamnagar. He served upto 5.10.1981. From 6.10.1981 to 21.7.1986, he worked as Mamlatdar at Ranavav, Junagadh District and in July, again, he was posted as RRT, Collector Office, Amreli. According to the petitioner, next promotion is to the post of deputy collector and he was eligible and was entitled to be promoted to the post of deputy collector in October, 1986. However, he was not promoted to the said post and other persons junior to him were promoted to the said post. The petitioner was required to cross the Efficiency Bar on 1st June, 1985 but he was not allowed to cross the efficiency bar and as a consequence thereof, he was not given next increment due. He had also received adverse remark made in his confidential reports for the period between 1.4.1984 to 31.3.1985 and, therefore, he was not promoted to the higher post of deputy collector. According to him, the confidential report adverse to the petitioner cannot be taken into consideration for the purpose of rejecting legitimate claim for promotion to the higher post of deputy collector. According to him, the adverse remarks made against him were not communicated within three months but were communicated as late as on 10th December, 1985 when he was to cross the efficiency bar. Representation dated 20.1.1986 was made in this behalf but of no avail. The petitioner has already retired from service in January, 1987.

In this petition, the petitioner has prayed that the respondents be directed to ignore the adverse remarks of the petitioner for the aforesaid period and be directed to promote the petitioner with retrospective effect by giving deemed date of promotion from the date when his next junior was promoted.

By communication annexure "A" page 21 dated 10.12.1985, the petitioner was communicated the adverse remarks for the period from 1.4.1984 to 31.3.1985. Against the said adverse remarks, the petitioner had made representation dated 20.1.1986 which has been considered and rejected by the authority on 8.9.1986 and the adverse entries made in his adverse remarks were made permanent.

Thereafter, show cause notice dated 24.9.1986 was issued by the authority to the petitioner wherein it has been mentioned that the petitioner is not entitled to cross the efficiency bar from 1st June, 1985 and explanation was invited from the petitioner by the authority. The reply was submitted by the petitioner on 12th October, 1986 and thereafter, two representations were made by the petitioner annexure "E" and "F" to the petition page 35 and 37 in detail and thereafter, the petitioner had made representation dated 15.10.1986 for promotion to the post of deputy collector. It is the case of the petitioner that his representation has not been considered by the authority in its proper perspective.

Learned advocate Mr. Parikh has submitted that the the Circular of the General Administration Department dated 20th January, 1972 provides that for the purpose of allowing the Government servant to cross the efficiency bar, the competent authority should make over all assessment of the annual confidential report of the person who is due to cross the efficiency bar relating to the period of service in the scale of pay in which it is proposed to allow to cross the efficiency bar. According to him, as per the said Government resolution, the government had laid down the criteria for allowing the government servants to cross the efficiency bar. He has submitted that the said criteria was found to belittle inconsistent with the provisions made in the note below instructions 6 of the instructions for writing of the annual confidential reports issued under the Government Resolution of the General Administration Department dated 8.3.1969 that the Government servant whose standard of work in the post is satisfactory should be graded as "Fair". As per the said resolution, the Government has directed in supersession of the previous instructions that for the purpose of allowing the government servants to cross the Efficiency Bar, the competent authority should make an overall assessment of the annual confidential report of the person due to cross the Efficiency Bar relating to the period of his service in the scale of pay in which it is proposed to allow the crossing of efficiency bar and particularly those relating to his service during the previous three years so as to satisfy itself that the person's service has been reasonably satisfactory and not below the average or poor. The person satisfying the above criteria should be allowed to cross the efficiency bar. If the services in the scale of pay is less than three years, then the available annual confidential reports of the year should be taken into account. He has submitted that vide said resolution, it was decided by the government that this

criteria for allowing the government servant to cross the Efficiency Bar should come into force with effect from 1st January, 1974 and should be made applicable to all cases in which the Efficiency Bar accruing on or after 1st January, 1972. According to him, past cases of the government servants decided otherwise than according to this criteria should be reconsidered and if they satisfy this criteria, they should also be allowed to cross the Efficiency Bar from the date as earlier than 1st January, 1972. He has also relied upon the government resolution dated 19.9.1975 wherein the Government has directed that in all cases in which it is proposed to disallow a government servant to cross the Efficiency Bar the authorities taking such decision should give an opportunity to the concerned employee inviting him to submit his explanation, including documents if he wants to produce in support of statement to be produced before the authority concerned within a period of one month from the date of receipt of such notice. It has been resolved as per the said resolution dated 19.9.1975 that the authority concerned shall, after considering all the factors and explanation put up by the employee decide the matter and issue appropriate final orders.

In the present case, the petitioner was working on the post of Mamlatdar from 1st June, 1980 and next promotion was to the post of Deputy Collector. It is the contention of Mr. Parikh that according to the resolution dated 20.1.1972, in all, service record of past previous three years is required to be taken into consideration by the authority but in this case, annual confidential reports for the period from 1st April, 1984 to 31st March, 1985 alone has been considered for denying the benefit of crossing efficiency bar and therefore, it is clear that past three years annual reports have not been taken into consideration and therefore, the action is not in consonance with the provisions of the resolution dated 20.1.1972. In show cause notice dated 24.9.1986, the adverse entry in the confidential report has been considered against the petitioner and on that basis, it was decided not to allow the petitioner to cross the Efficiency Bar considering adverse report for the period of one year alone as aforesaid. In view of this, Mr. Parikh has submitted that before passing the orders against the petitioner not to allow him to cross the efficiency bar, three years' service record was not taken into consideration by the authority and, therefore, that order is required to be quashed and set aside.

In support of his submissions, Mr. Parikh has relied upon the pronouncement of the apex court in case

of O.P.Gupta versus Union of India and others reported in AIR 1987 SC 2257 and in case of CN Chavda versus Director General of Police, Gujarat State, reported in 1992 (1) GLH page 209. He has also relied upon the decision of this court in case of S. Tripathi versus State of Gujarat reported in 1985 (2) GLR 616.

Learned AGP Mr. Desai has submitted that the adverse entries were communicated to the petitioner within reasonable period and before passing orders for disallowing the petitioner to cross the Efficiency Bar, show cause notice was served to the petitioner and after taking into consideration his reply to the said notice dated 24.9.1986, orders were passed and, therefore, this court should not interfere with the same.

I have considered the averments made by the petitioner in this petition as well as the submissions made by Mr. Parikh for the petitioner and Mr. Desai for the respondent authorities. I have also taken into consideration the decisions cited by Mr. Parikh in support of his submissions. In 1985 (2) GLR 616, the question of communication of adverse remarks to the employee concerned has been considered by the division bench of this court and it has been observed that the merits or demerits are to be judged on the basis of four factors, as per the rules already referred to hereinabove. In 1992(1) GLH 209, it has been observed by this court that the adverse remarks and the adverse entries in the petitioner's confidential report for the period between 13.10.1986 and 31.3.1987 were communicated to the petitioner after about thirteen months. The Government circulars issued from time to time provided that the adverse remarks should be communicated within six weeks and also that the aggrieved employee should make representation within six weeks from the date of communication of such adverse remarks. In view of grossly belated communication of the adverse remarks, the authority was directed to ignore those adverse entries. The learned single Judge of this court has relied upon the decision of the apex court in case of State of Haryana versus P.C. Vagha, reported in AIR 1987 SC 1201. Mr. Parikh has submitted that the adverse remarks for the period from 1st April, 1984 to 31st March, 1985 has been communicated to the petitioner on 10th December, 1985 and there was gross delay in communication of the adverse report and therefore, considering the decision of this court, such adverse remarks in the confidential report of the petitioner now cannot be considered against the petitioner and the show cause notice was issued by the respondent authority on 24th September, 1986 relying

upon the said adverse entry. Said adverse remarks were made absolute by order dated 8th September, 1986 and the petitioner was not permitted to cross the Efficiency Bar. He has, therefore, submitted that in view of the facts of the present case and the law laid down by this court as well as the apex court, the present petitions should be allowed by granting reliefs as prayed for in the present petition as prayed for.

Therefore, in light of the decisions cited above and considering the government resolution dated 20.1.1972 and 19.9.1975, the order passed by the respondent authority dated 10th December, 1985 confirming the said adverse entries by order dated 8th September, 1986 and the show cause notice dated 24th September, 1986 are required to be quashed and set aside by allowing this petition. Accordingly, order dated 10th December, 1985 as well as the order dated 8th September, 1986 and the show cause notice dated 24.9.1986 are hereby quashed and set aside and the respondents are directed to consider the case of the petitioner for promotion to the post of Deputy Collector by ignoring the said adverse remarks for the aforesaid period from 1st April, 1984 to 31st March, 1985 and it is also declared that the petitioner is entitled to normal increment from 1st June, 1985 till the date of his retirement. The respondents are directed to consider the case of the petitioner for promotion to the post of Deputy Collector by ignoring his adverse entries as aforesaid as expeditiously as possible, preferably within two months from the date of receipt of certified copy of this order. The respondents are further directed to release normal and regular increments of the petitioner from 1st June, 1985 and to pay all the difference of arrears of such increments within two months from the date of receipt of certified copy of this order. The respondents are also directed to fix the salary of the petitioner after releasing regular and normal increments from 1st June, 1985 and to pay whatever arrears available to the petitioner within two months from the date of receipt of certified copy of this order. Rule is made absolute accordingly with no order as to costs.

11.8.2000 (H.K. Rathod, J.)

Vyas